IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2281 OF 1996

Annappa Satu Mane,
C/o. Kisan Mane, Veer Sambhaji Nagar,
P. N.Lokhande Marg, Chembur, Bombay-400 089. ...
Petitioner.

Vs.

-1. Tajani Balu Shinde,
resident of Mane Rajuri, Tal.Tasgaon,
Dist. Sangli.

-2. State of Maharashtra.

-3. Additional Chief Secretary,
and Officer on Special Duty (Appeals),
Revenue and Forest Department,
Government of Maharashtra,
Bombay.32.

-4. Sub Divisional Officer, Miraj.

-5. Tahasildar, Tasgaon, Sangli. ...Respondents.

....

Mr.Madhav Jamdar for the Petitioner.
Mr. N. J. Patil for Respondent No.1.
Mr. C.R. Sonawane, AGP for Respondent Nos.2 to 5.

.....

CORAM : F.I REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

September 23, 2005.

ORAL JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

The dispute in the present case arises in the context of the Bombay Inferior Village Watans Abolition Act, 1958. The Act received the assent of the President on 14th January 1959 and was published in the Maharashtra Government Gazette on 20th January 1959.

2. Certain lands bearing Survey No.365/1 to 6, 366/1 to 4 and 367/1 to 4, admeasuring 10 acres and 31 gunthas and situated in village Manerajuri, were originally inferior village Watan-Service Inam lands of Class-VI. On 21st April 1905, these lands were allotted by an order of Raosaheb, State Karbhari of the then State of Ichalkaranji to one Shripati Sakharam Shinde, the grandfather of the First Respondent. These lands were allotted as a Service Inam for rendering service as a peon at the village Chawdi. Shripati Shinde expired in 1939 and thereafter, the name of Balu Shripati Shinde, the father of the First Respondent came to be recorded. Balu Shinde did not report for duty and the lands came to be forfeited by the Government of the then State of Ichalkaranji and were reallotted to the original Petitioner, Annappa Satu Mane by an order dated 5th April 1947. A *Kabulayat* was executed on 17th

September 1947 under which the lands were leased out to the Petitioner for an initial term of one year in consideration for his rendering service at the village Chawdi. The Kabulayat, it may be noted, draws reference to the allottee as Annappa Satu Mahar. The new allottee was a dalit. The *Kabulayat* adverts to the antecedent circumstances in which the lands were taken possession of by the Government from the earlier watandar upon his failure to render service. On 26th June 1948, an order for allotment of the lands thus came to be passed in favour of the original Petitioner.

3. The Petitioner remained in possession of the lands from the date of allotment in 1947 right until 16th September 1982. After the enforcement of the provisions of the Act, an application was made on 23rd February 1960 by the Petitioner to the Tahsildar requesting for a regrant of the lands in his favour. It would appear that on 29th August 1960, a similar application was made by the father of the First Respondent who also paid the occupancy price. The Petitioner paid the occupancy price on his part on 17th December 1960 for the purposes of a regrant. Both the applications were remitted by the Sub Divisional Officer, Miraj, to

the Tahsildar. On 8th July 1969, the Deputy Collector, Miraj passed an order holding that the lands were Watan lands which were initially cultivated by the Shinde family, but that subsequently due to the failure on their part to render services, the lands came to be resumed and leased to the Petitioner by the authorities of the former State. The Deputy Collector noted that the Petitioner was continuously in possession; that he was cultivating the lands uninterruptedly and that he was consequently entitled to a regrant of the lands as an authorised holder. The predecessor of the First Respondent was a party to the proceedings before the Deputy Collector. In pursuance of the order dated 8th July 1969, passed by the Deputy Collector, the Tahsildar, Tasgaon issued an order dated 19th April 1970 to regrant the lands in favour of the Petitioner. A Mutation Entry was thereupon carried out on 11th January 1971 in favour of the Petitioner.

4. Almost nine years after the order of regrant in favour of the Petitioner, an application was made by the First Respondent for a regrant of the lands in his favour. The application was rejected by an order dated 7th September 1978 passed by the Tahsildar, Tasgaon. The Tahsildar adverted to the circumstance

that on 8th July 1969, the lawful possession of the Petitioner in respect of the lands came to be certified and the lands were regranted to the Petitioner on the payment of the occupancy price. The Tahsildar noted that on 4th May 1947 the lands which had been allotted to the First Respondent had been forfeited by the then State. The application filed by the First Respondent was accordingly dismissed.

5. Against the order of the dismissal of his application, the First Respondent preferred a revision which was dismissed by the Additional Commissioner, Pune Division, on 13th February 1980. The First Respondent then filed an appeal before the Maharashtra Revenue Tribunal, during the pendency of which, another revision was preferred before the Officer on Special Duty (Appeals and Revisions), Revenue and Forests Department of the State Government. The Revenue Tribunal held that it had no jurisdiction. The Revision filed by the First Respondent before the Officer on Special Duty (Appeals and Revisions) was decided on 30th July 1981. The Officer on Special Duty to the State Government in the Revenue and Forests Department remanded the matter back to the Deputy Collector to determine what was the prescribed time limit

for the payment of the occupancy price under the Act and to consider whether the payment made by the First Respondent in the month of August 1960 was within the prescribed period. The Sub Divisional Officer was directed to decide the question of regrant upon the aforesaid determination. On remand, the Sub Divisional Officer, Miraj, passed an order dated 30th July 1982 holding that the occupancy price was required to be paid within three years of the date of the enforcement of the Act which period was subsequently extended to six years commencing from 1st February 1959. The First Respondent, it was recorded, had paid the occupancy price on 29th August 1960 which was within the period prescribed and he was consequently declared as an authorised holder. The Sub Divisional Officer directed that the lands should be regranted to the First Respondent on the usual terms and conditions. In pursuance of the order of the Sub Divisional Officer, the Tahsildar, Tasgaon, issued directions regranting the lands in favour of the First Respondent.

6. On 8th September 1982, the First Respondent made an application to the Tahsildar praying for actual possession of the lands. The grievance of the Petitioner is that the Clerk in the office of the Tahsildar, Tasgaon, made a note on the application on 12th

September 1982 which was a Sunday/public holiday. Possession of the lands was taken from the Petitioner and was handed over to First Respondent by the Tahsildar, Tasgaon, and a *Kabjepavti* came to be executed on 17th September 1982.

7. Aggrieved by the order of the Sub Divisional Officer, dated 30th July 1982, the Petitioner filed an appeal before the Collector on 25th October 1982 which came to be transferred by the State Government to itself for disposal. In paragraph 13 of the petition, it has been averred that since the Petitioner was illegally dispossessed of his lands by the Tahsildar, Tasgaon, he made representations to the authorities and the State Government decided to enquire into the conduct of the Officers dealing with the case. A report is stated to have been submitted on 4th December 1982 to the Collector, Sangli, disclosing the improper manner in which possession had been taken from the Petitioner and handed over to the First Respondent. The Tahsildar, Tasgaon, thereupon issued a notice on 21st March 1983 to the First Respondent stating that possession of the lands had been illegally obtained from the Petitioner and was handed over to the First Respondent, upon which a communication had been received from the Collector,

Sangli, on 14th March 1983. A notice was accordingly issued to First Respondent that possession would be restored to the original Petitioner on 28th March 1983. The First Respondent thereupon instituted a suit before the Court of the Civil Judge, Senior Division, Sangli, seeking inter alia a declaration that the notice issued by the Tahsildar on 21st March 1983, directing the First Respondent to hand over possession of the lands was null and void and seeking a permanent injunction restraining the Defendants to the suit from taking possession of the lands. The suit was dismissed by the Civil Judge, Senior Division, Sangli, on 30th July 1990. A Civil Appeal has been filed before the District Court, Sangli in 1990 (Civil Appeal 433 of 1990). The Court has been informed by Counsel appearing on behalf of the private parties in this case as well as by the AGP on instructions that though a period of nearly 15 years has elapsed since the date of the dismissal of the suit, the appeal has not been decided since the original papers in the revenue proceedings were not traceable. In the meantime, during the pendency of the appeal, the possession of the First Respondent has been protected by an interim order of the District Court. Counsel appearing on behalf of the Petitioner and the First Respondent and the AGP have stated before the Court that there

is no dispute about this factual position.

8. The appeal filed by the Petitioner was disposed of by the impugned order dated 2nd August 1995 passed by the Officer on Special Duty (Appeals) in the Revenue and Forests Department of the State Government. In so far as the First Respondent is concerned, the Officer on Special Duty held that he was not a watandar and was, therefore, not entitled to a regrant under Section 5(1) of the Act. The watan itself had ceased to exist. The Act envisaged the regrant of Watan land to a person if he was a watandar and if he possessed watan land. Inasmuch as the First Respondent failed to meet these requirements, he was held to be not entitled to a regrant. The Appellate Authority, however, held that (i) The appeal filed by the Petitioner herein was not maintainable; and (ii) That neither the Petitioner nor the First Respondent were authorised holders within the meaning of Section 2(1)(ii) of the Act. The Appellate Authority found merit in the contention that the Petitioner had been wrongfully dispossessed of his lands in pursuance of the order of the Tahsildar directing a regrant in favour of the First Respondent though the Petitioner had preferred an appeal against the order of

the Sub Divisional Officer. The Appellate Authority held that in the event that the Petitioner sought a regrant under Section 9(1) as an unauthorised holder to whom undue hardship would be caused by his eviction due to the investments made by him in the development of the lands, it would be open to the Petitioner to apply before the State Government for taking action under Section 9(1). On these findings, the Appellate Authority in exercise of the powers conferred under Section 257 of the Maharashtra Land Revenue Code, 1966, set aside the orders passed in favour of both the Petitioner and the First Respondent for regrant of the lands. The Appellate Authority directed that subject to the order that would be passed by the District Judge, Sangli, in the appeal pending before him, the possession of the land should be taken over by the Collector on behalf of the State Government. Liberty was, however, reserved to the Petitioner to move the Collector for regrant under Section 9(1) of the Act. The order of the Officer on Special Duty (Appeals) is questioned in these proceedings under Article 226 of the Constitution.

9. On behalf of the Petitioner, it has been submitted that (i) The main question which arose related to the status of the

Petitioner and of the First Respondent with respect to the lands in question and since this question came within the purview of Section 3(1), an appeal filed by the Petitioner before the Officer on Special Duty was tenable. It was submitted that under Section 3, the Collector is empowered to decide the question as to whether (i) any land is Watan land; (ii) a person is a Watandar; and (iii) any person is an unauthorised holder. Since the Collector is empowered to decide the status of the person in relation to watan land, an enquiry into the question whether a person is an unauthorised holder would take within its purview an enquiry as to whether his holding is authorised; (ii) The decision of the Collector is subject to an appeal under sub-section (2) of Section 3 and sub-section (3) provides that the decision of the Collector subject to the appeal to the State Government shall be final. In the present case, the Deputy Collector in his order dated 8th July 1969 held that the Petitioner was entitled to a regrant. Thereafter, on 7th September 1978, the Tahsildar rejected the application of the First Respondent which was confirmed by the Additional Commissioner on 13th February 1980. Hence, under Section 3, the decision of the Tahsildar and of the Additional Commissioner became final and could not in any event be challenged in a higher forum; (iii) The

status of the Petitioner as a person entitled to a regrant has attained finality in proceedings to which the First Respondent was a party and this finding could not have been disturbed. The proceeding which was instituted by the First Respondent almost nine years after the order of the Tahsildar passed in favour of the Petitioner was not maintainable; and (iv) Since the finding in regard to the status of the Petitioner attained finality, the subsequent directions issued in the appeal filed by the First Respondent were without jurisdiction, and no question then arose about the determination of the occupancy price in regard to the First Respondent.

10. On the other hand, on behalf of the First Respondent the order passed by the Officer on Special Duty has been sought to be supported and it has been urged that the finding that has been arrived at to the effect that the First Respondent is entitled to a regrant is valid and proper. It was also submitted that irrespective of the manner in which the First Respondent had obtained possession, the fact remains that the First Respondent is now in possession which has been protected by an interim order of the District Judge in appeal. It was urged that the Petitioner cannot

be regarded as an authorised holder within the meaning of Section 2(1) and the finding of the OSD is correct. Hence, it is submitted that no case for interference has been made out.

11. The Bombay Inferior Village Watans Abolition Act, 1958 was enacted “to abolish inferior village watans prevailing in certain parts of the State of Bombay.” The expression “inferior village watan” is defined in Section 2(1)(vii) to mean “the inferior village hereditary office together with the tenure of watan property, if any, and the rights, privileges and liabilities attached thereto.” The expression “watandar” is defined in Section 2(1)(xi) to mean “a person having a hereditary interest in an inferior village watan under the existing watan law”. Amongst other definitions, there are definitions of the expression “authorised holder”, of “existing watan law” and of “inferior village hereditary office” in clauses (ii), (v) and (vi) of sub-section (1) of Section 2. By virtue of of Section 4, on and from the appointed date, all inferior village watans stood abolished, notwithstanding anything contained in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a court or in an existing watan law. All incidents appertaining to the said watans, including the right to hold office

and watan property, the right to levy customary fees or perquisites and the liability to render service stood extinguished. Subject to the provisions of Sections 5, 6 and 9 all watan lands came to be resumed and were made subject to the payment of land revenue under the provisions of the Land Revenue Code and the Rules made thereunder as if they were unalienated land. Section 5 of the Act made enabling provisions for regrant of watan lands to holders of watans. Section 6 contains an enabling provision for regrant of watan lands to authorised holders, while Section 9 inter alia provides for the eviction of unauthorised holders summarily by the Collector in accordance with provisions of the Code. However, the proviso to sub-section (1) of Section 9 stipulates that the State Government may, in the case of any unauthorised holder, if it is of opinion that the eviction of such holder will involve undue hardship in view of the investment made by such holder in the development of the land or in the non-agricultural use of the land or otherwise, direct the Collector to regrant the land to such holder on payment of such amount and subject to such terms and conditions as the State Government may determine.

12. While considering the rival submissions that have been

urged on behalf of the contesting parties, it merits emphasis at the outset that the status of the predecessors of the First Respondent as Watandar came to an end due to a failure to render service to the erstwhile State and the lands were reallotted to the original Petitioner who was a dalit. Balu Shripati Shinde in whose name the lands were recorded after the death of the original Watandar, failed to render services to the erstwhile State of Ichalkaranji in connection with the village Chawdi for which he was engaged. Thereupon, the lands were resumed by the State and came to be allotted to the original Petitioner in terms of the *Kabulayat* that was executed on 17th September 1947. The predecessor of the First Respondent ceased to be a Watandar and was not a Watandar on the date on which the Bombay Inferior Village Watans Abolition Act, 1958 came into force. The Petitioner in whose favour a *Kabulayat* had been executed on 17th September 1947 initially for a period of one year, applied for a regrant and in pursuance of his application, the Deputy Collector, Miraj, upheld the entitlement of the Petitioner to a regrant. The order of the Deputy Collector was implemented by the Tahsildar on 19th April 1970. Both the Petitioner and the First Respondent were parties to the proceedings before the Deputy Collector. The order of the Deputy

Collector attained finality since that order was not challenged by the First Respondent by adopting appropriate proceedings in accordance with law. Nearly nine years after the order of the Tahsildar dated 8th July 1969, the First Respondent moved an application dated 11th April 1978 for a regrant of the lands in his favour.

13. A finality attaches to a determination made under sub-section (1) of Section 3 subject to an appeal before the State Government under sub-section (2). Section 3 of the Act provides as follows :

> "3. (1) If any question arises,-
>
> -(a) whether any land is watan land,
>
> -(b) whether any person is a watandar,
>
> -(c) whether any person is an unauthorised holder,
> the Collector shall, after giving the party affected an opportunity to be heard and after holding an inquiry, decide the question.
>
> -(2) Any person aggrieved by such decision may file an appeal to the State Government within ninety days of such decision.
>
> -(3) The decision of the Collector subject to an appeal under sub-section (2) and the decision of the State Government in appeal under sub-section (2) shall be final."

14. The Petitioner was in possession of the lands ever since the execution of the *Kabulayat* in 1947. The entitlement of the Petitioner to a regrant was recognised on 8th July 1969 and 19th April 1970 and the Petitioner paid the occupancy price. The order in favour of the Petitioner attained finality in proceedings to which the First Respondent was a party. Now, it is a settled principle in law that even when a statutory provision does not lay down any specific limit of time for the exercise of powers, statutory powers must nevertheless be exercised within a reasonable period of time. In **State of Gujarat vs. Patil Raghav Natha,** 1969(2) SCC 187, the Supreme Court considered the scope of the revisional power conferred upon the State Government under Section 211 of the Bombay Land Revenue Code, 1879. While taking note of the fact that the statute did not prescribe any specified time period for the exercise of powers, the Court held thus:

> "It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

In that case, the Supreme Court was of the view that under Section 65 of the Code, if the Collector did not inform the applicant of his decision, within a period of three months, the permission applied for was deemed to have been granted. The Supreme Court held that reading Sections 211 and 65 of the Bombay Land Revenue Code, 1879 together, the Commissioner must exercise revisional powers within two months of the order of the Collector. This, the Supreme Court held, would be a reasonable time because after the grant of permission for building purposes, an occupant is likely to spend money on starting building operations within at least two months from the date of the permission. The principle was reiterated in a judgment of the Supreme Court in **Ram Chand vs. Union of India**, (1994) 1 SCC 44. In **Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim,** (1997) 6 SCC 71, a suo motu enquiry was initiated under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 as applicable in the State of Gujarat in respect of the validity of certain sale deeds which were executed in December 1972. The Mamlatdar held that the sales in question were invalid as the appellant was not an agriculturist belonging to the State of Gujarat. The Supreme Court held that the suo motu power under Section

84-C had not been exercised within a reasonable time:

> "In the present case the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S.B. Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat v. Jethmal Bhagwandas Shah disposed of on 1-3-1990, where in connection with Section 84-C itself it was said that the power under the aforesaid section should be exercise within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v. Patil Raghav Natha and in the case of Ram Chand v. Union of India has impressed that where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under Section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time." (emphasis supplied).

15. In the present case, the rights which have enured to the benefit of the Petitioner came to be crystalised by the order of regrant that was passed by the Deputy Collector on 8th July 1969. The First Respondent instituted proceedings for a regrant in his favour over nine years thereafter on 7th September 1978. The length of time which was allowed to lapse has not been explained at all and we see no justification why, the application filed by the

First Respondent should have been entertained at all after the lapse of a period of over nine years since the order of regrant that was passed in favour of the Petitioner.

16. The First Respondent who was a party to the proceedings instituted by the Petitioner filed, as we have noted earlier, an application for a regrant in his favour on 11th April 1978. The application has been adverted to in the order of the Tahsildar dated 7th September 1978 as an application for regrant of the Watan lands falling in Inam Class-VI. After the dismissal of this application on 7th September 1978, the First Respondent moved the Additional Commissioner who confirmed the order of the Tahsildar. On behalf of the Petitioner, it has been submitted that the application filed by the First Respondent was essentially an application which fell for determination under Section 3(1) and the order of the Tahsildar could be subject to only one appeal under Section 3(2). It was urged that the order of the Tahsildar was confirmed by the Additional Commissioner and consequently the Officer on Special Duty had no jurisdiction to entertain the revision filed by the First Respondent. Acting on the order of remand passed by the Officer on Special Duty, the Sub Divisional Officer,

ordered a regrant in favour of the First Respondent. The Petitioner thereupon moved the State Government in appeal under Section 3 (2) of the Act.

17. We find a considerable degree of substance in the contention of the Petitioner that the impugned order suffers from a clear error apparent in so far as it holds that the appeal filed by the Petitioner was not maintainable. The application filed by the First Respondent for a regrant of the lands in his favour was on the basis that the lands were watan lands and that the First Respondent was a watandar whose lands had been resumed. The application for a regrant by the First Respondent therefore, involved a question as to whether the First Respondent was in fact, a watandar and whether the lands in question were watan lands. These questions fell squarely within the ambit of Section 3(1) of the Act. The decision thereon, which was rendered on 30th July 1982, was subject to a right of appeal which was available to the Petitioner under Section 3(2) of the Act. There is, therefore, merit in the submission that the finding of the Officer on Special Duty to the effect that the appeal was not maintainable suffered from a clear and patent error.

18. The Officer on Special Duty has in the course of his impugned order rendered a finding in regard to the merits of the entitlement of the First Respondent. The First Respondent has not disputed the correctness of those findings nor has he instituted any proceedings to impugn the order in so far as it holds that the First Respondent has no legitimate right or interest. The Officer on Special Duty has in the course of the order held thus:

> "It is crystal clear that the opponent cannot be considered a watandar, who was entitled to regrant of the land under section 5(1) of the Act of 1958. The Watan in this case ceased to exist as a result of land having been given in possession of Anna Satu Mane by lease in 1947. The law envisages regrant of the watan land to a person if he is a watandar and is in possession of the watan land. Since Tanaji Shinde did not fulfil these conditions, he was not eligible to the regrant of the watan lands under Section 5(1). Provisions of law were not followed when the revenue officers ordered that land should be regranted to him or that he was an authorised holder."

The order of the Officer on Special Duty also takes a serious note of the circumstances in which the First Respondent obtained possession of the lands from the Petitioner. After the order of 30th July 1982, allowing a regrant in favour of the First Respondent, the Circle Officer evicted the Petitioner and handed over possession to

the First Respondent. The Petitioner lodged an appeal before the Commissioner, Pune Division against the order of the Sub Divisional Officer, dated 30th July 1982 and on 13th October 1982, he was informed by the Commissioner that an appeal would have to be filed before the Collector. The Petitioner did so on 25th October 1982 which appeal was eventually transferred to the State Government. In the meantime, the First Respondent made an application to the Tahsildar on 8th September 1982 for obtaining possession, upon which a clerk in the office of the Tahsildar made a note on 12th September 1982 which according to the Petitioner was a Sunday/public holiday. Possession was taken over from the Petitioner in haste and a possession receipt came to be executed on 17th September 1982. An enquiry was thereafter held in which it was found that the Petitioner had been wrongfully dispossessed of the lands which he had possessed since 1947. When the Tahsildar issued a notice for the restoration of possession to the First Respondent on 21st March 1983, a suit for injunction was instituted by the First Respondent. The suit was dismissed on 30th July 1990 and an appeal has been pending before the District Court for the last 15 years. We have been informed by Counsel at the Bar that the appeal has not been heard for the reason that the

original records of the revenue proceedings were not traceable. We consider it inappropriate to express any view on the merits of the aforesaid appeal since it is still to be decided by the District Court and the First Respondent is protected by an interim injunction in those proceedings. There is no reason why the hearing of the appeal in what is essentially a suit for injunction should be deferred any further due to the non-availability of the original papers in the revenue proceedings.

19. The impugned order suffers from a clear and patent error of reasoning in so far as it operates to quash the order of regrant made in favour of the Petitioner. The Petitioner had filed an appeal before the State Government which was the subject matter of decision before the Officer on Special Duty. The order of regrant that was issued in favour of the Petitioner on 8th July 1969 was not challenged. The Officer on Special Duty was in error in seeking to exercise *suo motu* powers under Section 257 of the Maharashtra Land Revenue Code, 1966 to set aside all the orders that were passed in favour of the Petitioner in the absence of any challenge to those orders before the authority. The Officer on Special Duty was not justified in reopening the validity of the order of 8th July

1969 by which the lands came to be regranted to the Petitioner. There was no reason to reopen that issue particularly at that belated stage and to consider whether the Petitioner was entitled to a regrant, as an authorised holder or otherwise. For the same reason, it is not open to the First Respondent to question the order of regrant made in favour of the Petitioner in these proceedings. The First Respondent who had no subsisting right or interest on the date when the Act came into force and has been held not to possess any right or interest cannot be heard to question the order of regrant in favour of the Petitioner at this stage.

20. For these reasons, we are of the view that the impugned order of the Officer on Special Duty in the Revenue and Forests Department of the State Government dated 2nd August 1995, in so far as it adversely affects the legitimate rights of the Petitioner is unsustainable and must be quashed and set aside. The Petitioner has confined his challenge in these proceedings to the impugned order to the extent to which it has adversely affected his rights by setting aside the order of regrant which enured to his benefit. Possession has been unlawfully taken over from the Petitioner on the basis of the order of regrant passed in favour of the First

Respondent by the Sub Divisional Officer, on 30th July 1982. That order does not hold the field any longer having been set aside by the impugned order of the Officer on Special Duty dated 2nd August 1995. Possession must in consequence be restored to the Petitioner. Since the appeal filed by the First Respondent against the dismissal of the suit for injunction is pending before the District Judge, Sangli, wherein, the Court is informed, an interim injunction operates to protect the possession of the First Respondent, it would be appropriate to defer the restoration of possession to the Petitioner until the appeal is heard and disposed of by the District Judge.

21. We accordingly dispose of this petition in the following terms:

-(i) Rule is made absolute in terms of prayer clause (b); (ii) The District Judge, Sangli is directed to hear and dispose of Appeal No.433 of 1990 as expeditiously as possible, but in any event on or before 31st December 2005; (iii) Parties are directed to appear before the Learned District Judge for receiving directions on 3rd October 2005 on which date, the Learned Judge is requested to

issue directions for the early hearing of the appeal; (iv) The hearing of the appeal shall not be postponed in the event that the original record, as noted earlier, is not traceable; (v) In the event that the appeal filed by the First Respondent is dismissed, the possession of the lands which form the subject matter of these proceedings shall be restored by the First Respondent to the Petitioner within a period of eight weeks thereafter. In the event that the First Respondent fails to do so, the Collector shall take necessary steps to take over possession from the First Respondent and hand over possession to the Petitioner within a period of eight weeks thereafter. In the event that the aforesaid appeal is allowed, it would be open to the Petitioner to pursue such remedies as are available in law. The Petitioner shall be entitled to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)